

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LILLY DUVALL,

Appellant,

v

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 903

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER, the appeal of a \$50.00 civil penalty for an alleged open burning violation of respondent's Regulation I having come on regularly for formal hearing before Board members Chris Smith and Walt Woodward on the 22nd day of September, 1975, at Tacoma, Washington and appellant Lilly Duvall appearing pro se and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin and the Board having considered the sworn testimony, the exhibits, records and files herein and having entered on the 8th day of October, 1975, its proposed Findings of Fact, Conclusions of Law

1 and Order, and the Board having served said proposed Findings, Conclusions
2 and Order upon all parties herein by certified mail, return receipt
3 requested and twenty days having elapsed from said service; and

4 The Board having received no exceptions to said proposed Findings,
5 Conclusions and Order and the Board being fully advised in the premises;
6 now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
8 Findings of Fact, Conclusions of Law and Order dated the 8th of
9 October, 1975, and incorporated by this reference herein and attached
10 hereto as Exhibit A, are adopted and hereby entered as the Board's
11 Final Findings of Fact, Conclusions of Law and Order herein.

12 DATED this 12th day of November, 1975.

13 POLLUTION CONTROL HEARINGS BOARD

14 Chris Smith
15 CHRIS SMITH, Chairman

16 Walt Woodward
17 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,
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This matter, the appeal of a \$50.00 civil penalty for an alleged open burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at a formal hearing in the Public Utilities Building, Tacoma, on September 22, 1975.

Appellant appeared pro se; respondent through Keith D. McGoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

From testimony heard and exhibits examined, the Pollution Control

EXHIBIT A

1 Hearings Board makes these

2 FINDINGS OF FACT

3 I.

4 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d
5 Ex. Sess. (RCW 43.21B.260), has filed with this Board a certified copy of
6 its Regulation I containing respondent's regulations and amendments
7 thereto.

8 II.

9 Section 9.02(d)(2)(iii) of respondent's Regulation I makes it unlawful
10 to cause or allow an outdoor land-clearing fire in an urbanized area
11 without respondent's verification that the average population of the
12 area is 2,500 persons or less per square mile. Section 3.29 authorizes
13 respondent to levy a civil penalty of not more than \$250.00 for any
14 violation of Regulation I. Section 9.02(g) states that the person who
15 owns property on which an outdoor fire occurs has "caused or allowed"
16 the fire.

17 III.

18 On July 9, 1975, on property owned by appellant at 12121 Nyanza Road,
19 Tacoma, Pierce County--which is an urbanized area as defined by
20 Section 9.02 of respondent's Regulation I--an inspector on respondent's
21 staff saw a land-clearing pile of brush smoldering and smoking. The
22 inspector ascertained from respondent's records that no population
23 verification request for the area had been made by appellant.

24 In connection with the above incident, respondent served on
25 appellant Notice of Violation No. 10866, citing Section 9.02 of
26 respondent's Regulation I, and Notice of Civil Penalty No. 2260 in the
27 sum of \$50.00, which is the subject of this appeal.

IV.

Appellant, who was not present on her property at the time of the inspector's observation, did not ignite that debris pile. She believes, but did not prove, that the fire resulted from a bulldozing operation which stirred up some coals from an old fire.

V.

Any Conclusion of Law hereinafter recited that is deemed to be a Finding of Fact is adopted herewith as same.

From these facts, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Appellant, being the owner of property in an urbanized area on which there was a land-clearing fire without a population verification, was in violation of respondent's Regulation I as cited in Notice of Violation No. 10866.

II.

Notice of Civil Penalty No. 2260, being one-fifth of the maximum allowable amount, is reasonable.

III.

Any Finding of Fact herein that is deemed to be a Conclusion of Law is adopted herewith as same.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied and Notice of Civil Penalty No. 2260 is sustained in the amount of \$50.00.

FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1 DONE at Lacey, Washington, this 8th day of October, 1975.

2 POLLUTION CONTROL HEARINGS BOARD

3 Chris Smith

4 CHRIS SMITH, Chairman

5 Walt Woodward

6 WALT WOODWARD, Chairman

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26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER